IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950.

AUGUSTA M. TURNER,

Petitioner,

vs.

ALTON BANKING AND TRUST COMPANY, Executor of the Estate of August Luer, Deceased,

Respondent.

No. 282.

PETITION FOR REHEARING ON PETITION FOR APPLICATION FOR CERTIORARI.

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AUGUSTA M. TURNER, Petitioner, vs. ALTON BANKING AND TRUST COMPANY, Executor of the Estate of August Luer, Deceased, Respondent.	No. 232.

PETITION FOR REHEARING ON PETITIONER'S APPLICATION FOR CERTIORARI.

Petitioner prays that a rehearing be granted on her application for certiorari as styled above.

This request for rehearing is made pursuant to Rule 33, as amended, and the intervening circumstances of substantial and controlling effect are:

1. Since the preparation of petitioner's application for certiorari the case of Woerter v. Halperin, decided by the

Appellate Court of Illinois April 25, 1950, has been reported and has come to the attention of the petitioner and her counsel. It is now reported as 340 Ill. App. 406, 92 N. E. 2d 179, and controls the decision of the Court of Appeals in this case.

2. Two of the Justices of the Supreme Court were of opinion that the application for certiorari should have been granted.

SUGGESTIONS.

I.

Illinois Rule.

On April 25, 1950, the Court of Appeals in the State of Illinois in the case of Woerter v. Halperin, 340 Ill. App. 406, 92 N. E. 2d 179, held that where a cognovit note appears on its face to be barred by limitations the warrant of attorney accompanying the note becomes void, and that any judgment rendered on said note is a void judgment.

In the opinion the court said (92 N. E. 2d, l. c. 180, 181):

> "Where a note appears to be on its face barred by the statute of limitations, the warrant of attorney confers no authority to confess judgment . . .
>
> "In cases of confession of judgment, jurisdiction over the person to enter judgment is acquired through the warrant, and consequently if the warrant is void the judgment so entered without authority is likewise void."

In the case at bar the note was dated February 17, 1930, and the suit on which judgment was entered was brought May 21, 1943. The note therefore appeared on its face to be barred by the ten-year statute of limitations. The court entering the judgment did not acquire any jurisdiction over

the person of your petitioner and the judgment rendered on said note was therefore void.

The Court of Appeals for the Eighth Circuit gave full faith and credit to a void judgment in violation of the mandate of this court in the case of Estin v. Estin, 334 U. S. 541.

In the Estin case this court said:

> "A judgment of a court having no jurisdiction to render it is not entitled to the full faith and credit which the constitution and statute of the United States demand."

In the case of Halvey v. Halvey, 330 U. S. 610, this court further said:

> "If the Court of the State which rendered the judgment had no jurisdiction over the person or the subject matter, the jurisdictional infirmity is not saved by the full faith and credit clause."

Rule of Court of Appeals.

The challenged opinion, on the other hand, holds as follows:

> "The record here shows clearly that the action on the note was not barred by the ten-year statute of limitations . . . and it is equally clear that the statute was tolled when appellant moved to Missouri in 1935 while the owner of the note, . . ."
>
> * * * * * * *
>
> "That the note in question and the non-residence of the defendant were shown on the face of the record in the suit in the Illinois court cannot be doubted. The complaint alleged that a photostatic copy of the note was attached to and made part thereof; and it is

alleged that defendant, maker of the note '. . . is now, and has been continuously for seven years last past a non-resident of the State of Illinois . . .' and 'is now and has been continuously for seven years last past a resident of the State of Missouri'; and the affidavit attached to the complaint averred that defendant had continuously resided in Missouri for the past seven years. This was sufficient. Smith-Hurd Stats., Ill., c. 110, Sec. 160."

* * * * * * *

"The judgment of the Illinois court is final and conclusive in all courts. It cannot be attacked collaterally in the federal courts in Missouri. The Full Faith and Credit Clause of the Constitution (Art. IV, Sec. 1) . . .

"Due process does not require notice where rights are established in conformity with state law."

Due process requires notice and an opportunity to be heard on any issue, particularly and specifically an issue the determination of which decides whether or not the court has jurisdiction over the person of the defendant. The Court of Appeals has held that the Illinois court could find that the note was not barred by the statute because of plaintiff's alleged non-residence without notice to the defendant and an opportunity to be heard on this issue. The Illinois court has now held that the warrant of attorney was insufficient after the running of ten years to confer jurisdiction on the Illinois court to determine this issue. It is hard to conceive of a more egregious deprivation of due process of law.

II.

Of the accumulated applications for certiorari since the June, 1950, adjournment of the court, 241 were denied on the October decision day, October 9, 1950. Two hundred forty of the 241 applications were denied unanimously,

while one of the applications was denied by the divided opinion of the court.

The basic reason for the discretion given this court to accept or deny jurisdiction in cases presented to the court through certiorari is certainly to avoid clogging the court's docket with such a number of cases that the work of the court in determining more important questions is hampered. With respect to those applications for certiorari in which all of the justices voting conclude that the application should be denied, no real basis for complaint by the petitioner exists. Where, on the other hand, even one of the justices of the court feels that certiorari should be granted and where the handling of the court's business will not be impeded by accepting jurisdiction, the sound administration of justice would seem to require that the court should take jurisdiction of the cause and decide it on its merits. Provisions in many jurisdictions for certification of a cause to a higher tribunal require the dissent of only one of the judges participating in the decision (e. g., Const. Mo., Art. V, Sec. 101; Campbell v. Wiggins, 85 Tex. 451, 22 S. W. 5; Cf. German Ins. Co. v. Hearne, 118 Fed. 134, 135).

The petitioner in this case alleges that she has been denied an opportunity in all courts to present her defenses. The record shows that this is true. The opinion of the Court of Appeals has said:

> "Due process does not require notice where rights are established in conformity with state law."

This court, in denying the writ, has given sanction to this terrifying statement of the law, and the fact of the dissent of two of the justices from the order denying the writ of certiorari will be pointed to by lawyers relying upon this principle as evidencing the fact that the Supreme Court expressly considered and declined to review

this statement. The plight of the petitioner is of no great moment to anyone but her, but the perpetuation of the dictum by the refusal of this court to review the decision will, until it is repudiated, as one day it must be, lead many another traveler on the thorny road of justice to his doom. It is, therefore, earnestly requested that this court reconsider the petitioner's application for a writ of certiorari.

Respectfully submitted,

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LON HOCKER,
Attorney for Petitioner.

Lon Hocker, being duly sworn, upon his oath states that the foreging application for a rehearing is made in good faith and because he verily believes that an injustice has been done to the law and to the petitioner in the denial of an application for certiorari and that the application is not made for delay.

He also certifies that the petition is restricted to the grounds specified in Rule 33, as amended.

.....

Lon Hocker.

Subscribed and sworn to before me this 19th day of October, 1950.

.....

Emeline H. Blind,
Notary Public.

(Seal)

My commission expires: Oct. 12, 1951.